

## **TITLE 327 WATER POLLUTION CONTROL BOARD**

**LSA Document #96-101**

### **DIGEST**

Adds 327 IAC 2-6.1 regarding spill reporting, containment and response. Repeals 327 IAC 2-6. Effective 30 days after filing with the secretary of state.

### **HISTORY**

First Notice of Comment Period: May 1, 1995, Indiana Register (18 IR 2171).  
Second Notice of Comment Period: December 1, 1995, Indiana Register (19 IR 508).  
Notice of First Hearing: March 1, 1996, Indiana Register (19 IR 1484).  
Date of First Hearing: March 13, 1996.  
Proposed Rule: June 1, 1996, Indiana Register (19 IR 2597).  
Notice of Second Hearing: June 1, 1996, Indiana Register (19 IR 2597).  
Date of Second Hearing: July 10, 1996.

### **327 IAC 2-6**

#### **327 IAC 2-6.1**

SECTION 1. 327 IAC 2-6.1 IS ADDED TO READ AS FOLLOWS:

### **RULE 6.1. SPILLS; REPORTING, CONTAINMENT AND RESPONSE**

#### **327 IAC 2-6.1-1 Applicability**

**Authority:** IC 13-8-4; IC 13-14-8-7

**Affected:** IC 13-2; IC 13-18-1; 13-18-3; 13-18-4; 13-18-8; 13-18-17

**Sec. 1.** This rule applies to the reporting and containment of, and the response to those spills of hazardous substances, extremely hazardous substances, petroleum and objectionable substances that are of a quantity, type, duration and in a location as to damage the waters of the state. Nothing in this rule is intended to affect reporting or cleanup requirements set forth by other federal, state, or local laws. (*Water Pollution Control Board; 327 IAC 2-6.1-1*)

#### **327 IAC 2-6.1-2 Special Areas**

**Authority:** IC 13-8-4; IC 13-14-8-7

**Affected:** IC 13-2; IC 13-18-1; 13-18-3; 13-18-4; 13-18-8; 13-18-17

**Sec. 2.** Certain areas of the state are recognized as having unique geology. A large section of the mid-southern part of the state is a karst region. Portions of Saint Joseph,

Elkhart, Kosciusko and LaGrange counties contain a sole source aquifer as referenced in 42 U.S.C. 300h-3(e). The waters of the state are particularly vulnerable to damage from spills in these areas and care should be exercised when evaluating damage from spills. Information about these areas can be obtained by calling the office of environmental response, emergency response branch. (*Water Pollution Control Board; 327 IAC 2-6.1-2*)

### **327 IAC 2-6.1-3 Exclusions**

**Authority:** IC 13-8-4; IC 13-14-8-7

**Affected:** IC 13-11-2; IC 13-18-1; 13-18-3; 13-18-4; 13-18-8; 13-18-17

**Sec. 3.** Notwithstanding any other section of this rule, the reporting requirement of this rule does not apply to the following occurrences:

- (1) Discharges or exceedances that are under the jurisdiction of an applicable permit when the substance in question is covered by the permit and death or acute injury or illness to animals or humans does not occur;
- (2) Lawful application of materials including but not limited to:
  - (A) Commercial or natural fertilizers and pesticides on or to land or water; or
  - (B) Dust suppression materials.
- (3) The application of petroleum necessary for construction that does not damage waters of the state.
- (4) Spills of less than one (1) pound or one (1) pint;
- (5) Spills of integral operating fluids, in the use of motor vehicles or other equipment, the total volume of which is less than or equal to fifty-five (55) gallons and which do not damage waters of the state.
- (6) Oil sheens produced as a result of the normal operation of properly functioning watercraft.
- (7) A release of a substance integral to a spill response activity that has been approved and authorized by a state or federal on-scene coordinator.

(*Water Pollution Control Board; 327 IAC 2-6.1-3*)

### **327 IAC 2-6.1-4 Definitions**

**Authority:** IC 13-8-4; IC 13-14-8-7

**Affected:** IC 13-11-2; IC 13-18-1; 13-18-3; 13-18-4; 13-18-8; 13-18-17; IC 14-8-2-7

**Sec. 4.** In addition to the definitions contained in IC 13-11-2-17(d), IC 13-11-2-35(a), IC 13-11-2-51, IC 13-11-2-158(a), IC 13-11-2-160, IC 13-11-2-260, and IC 13-11-2-265, and in 327 IAC 1, the following definitions apply throughout this rule:

- (1) "Animal" means all mammals, birds, reptiles, amphibians, fish, crustaceans, and mollusks.
- (2) "Aquatic life" means those plants and macroinvertebrates that are dependent upon an aquatic environment.

**(3) "Contain" means to take such immediate action as necessary to dam, block, restrain, or otherwise act to most effectively prevent a spill from entering waters of the state or minimize damage to the waters of the state from a spill.**

**(4) "Damage" means the actual or imminent alteration of the waters of the state so as to render the waters harmful, detrimental, or injurious to:**

- (A) Public health, safety, or welfare;**
- (B) Domestic, commercial, industrial, agricultural, or recreational uses; or**
- (C) Animals or aquatic life.**

**(5) "Downstream water user" means:**

- (A) A community public water supply, as identified by the department of natural resources under IC 14-25-7-13(d);**
- (B) A significant water withdrawal facility as registered with the department of natural resources under IC 14-25-7-15;**
- (C) Users of recreational waters; or**
- (D) Any other user made known to the person who has a spill.**

**(6) "Extremely hazardous substance" means a substance identified pursuant to 42 USC 11002 and 11004. (40 CFR 355 Appendix A.)**

**(7) "Facility" means all land, buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with, such person.**

**(8) "Facility boundary" means the boundary of a facility or an easement or right-of-way.**

**(9) "Hazardous substance" has the meaning set forth in 42 USC 9601(14).**

**(10) "Mode of transportation" includes, but is not limited to, carriage by;**

- (A) Rail and motor vehicles;**
- (B) Aircraft;**
- (C) Watercraft;**
- (D) Pipelines; or**
- (E) Other means of transportation**

**in commerce. This definition excludes carriage within a facility by transportation equipment owned, operated, or controlled by that facility.**

**(11) "Objectionable substances" means substances that are:**

- (A) Of a quantity, and a type; and**
- (B) Present for a duration and in a location;**

**so as to damage waters of the state. This definition excludes hazardous substances, extremely hazardous substances, petroleum, and mixtures thereof.**

**(12) "On-Scene Coordinator" means a state or federal official designated by the department, the United States Environmental Protection Agency, or the United States Coast Guard to direct and coordinate special spill response activities.**

**(13) "Recreational waters" means any water used for:**

- (A) Boating, swimming, fishing, hunting, trapping, or wildlife viewing, or**
- (B) Public access areas that are owned by the department of natural resources**

or the federal government, as listed by the department.

(14) "Reportable quantity" means the amount of a hazardous substance or extremely hazardous substance that is required to be reported under federal law under 42 USC 9602(a) and (b) and 42 USC 9603(a). ( 40 CFR 302.4 or 40 CFR 355 Appendix A.)

(15) "Spill" means any unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge or other loss of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances. The term does not include releases to impermeable surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil.

(16) "Spill response" for purposes of this rule means the following:

(A) The spill is contained; and

(B) Free material is removed or neutralized.

(17) "Spill report" means an oral report that includes the following information about a spill, to the extent that the information is known at the time of the report:

(A) The name, address and telephone number of the person making the spill report.

(B) The name, address and telephone number of a contact person, if different from clause (A).

(C) The location of the spill.

(D) The time of the spill.

(E) The identification of the substance spilled.

(F) The approximate quantity of the substance that has been or may further be spilled.

(G) The duration of the spill.

(H) The source of the spill.

(I) Name and location of the waters damaged.

(J) The identity of any response organization responding to the spill.

(K) What measures have been or will be undertaken to perform a spill response.

(L) Any other information that may be significant to the response action.

(18) "Waters", as defined in IC 13-11-2-265, means the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, that are wholly or partially within, flow through, or border upon this state. The term does not include any private pond or any off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water prior to discharge unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution. (*Water Pollution Control Board; 327 IAC 2-6.1-4*)

### **327 IAC 2-6.1-5 Reportable Spills; facility**

**Authority:** IC 13-8-4; IC 13-14-8-7

**Affected:** IC 13-11-2; IC 13-18-1; 13-18-3; 13-18-4; 13-18-8; 13-18-17

**Sec. 5. The following spills from a facility must be reported:**

**(1) Spills that damage the waters of the state so as to cause death or acute injury or illness to humans or animals.**

**(2) Spills from a facility that has been notified in writing by a water utility that it is located in a delineated public water supply wellhead protection area as approved by the department under 327 IAC 8-4.1 that are:**

**(A) Spills of hazardous substances or extremely hazardous substances when the amount spilled exceeds one hundred (100) pounds or the reportable quantity, whichever is less;**

**(B) Spills of petroleum when the amount spilled exceeds fifty-five (55) gallons; or**

**(C) Spills of objectionable substances as defined in section 4(11) this rule.**

**(3) Spills that damage waters of the state and that:**

**(A) Are located within fifty (50) feet of a known private drinking water well located beyond the facility property boundary; or**

**(B) Are located within 100 yards of:**

**(i) any high quality water designated as an outstanding state resource pursuant to 327 IAC 2-1-2(3), excluding Lake Michigan;**

**(ii) any water designated as exceptional use pursuant to 327 IAC 2-1-3(a)(6) and 327 IAC 2-1-11(b);**

**(iii) any water designated as capable of supporting a salmonid fishery pursuant to 327 IAC 2-1-6(c)(1), except Lake Michigan; or**

**(iv) any water that is a fish hatchery, fish and wildlife area, nature preserve, or recreational water owned by the department of natural resources or the federal government.**

**(4) For any spill which does not meet the criteria in subdivisions (1) through (3), the following must be reported:**

**(A) Spills to surface waters:**

**(i) spills of hazardous substances or extremely hazardous substances when the amount spilled exceeds one hundred (100) pounds or the reportable quantity, whichever is less;**

**(ii) spills of petroleum of such quantity as to cause a sheen upon the waters; or**

**(iii) spills of objectionable substances as defined in section 4(11) of this rule.**

**(B) Spills to soil beyond the facility boundary:**

**(i) spills of hazardous substances or extremely hazardous substances when the amount spilled exceeds one hundred (100) pounds or the reportable quantity, whichever is less;**

**(ii) spills of petroleum when the amount spilled exceeds fifty-five (55) gallons; or**

**(iii) spills of objectionable substances as defined in section 4(11) of this rule.**

**(C) Spills to soil within the facility boundary:**

- (i) spills of hazardous substances or extremely hazardous substances when the amount spilled exceeds the reportable quantity;**
- (ii) spills of petroleum when the spilled amount exceeds one thousand (1,000) gallons; or**
- (iii) spills of objectionable substances as defined in section 4(11) of this rule.**

**(5) Any spill for which a spill response has not been done.**

*(Water Pollution Control Board; 327 IAC 2-6.1-5)*

**327 IAC 2-6.1-6 Reportable Spills; transportation**

**Authority: IC 13-8-4; IC 13-14-8-7**

**Affected: IC 13-11-2; IC 13-18-1; 13-18-3; 13-18-4; 13-18-8; 13-18-17**

**Sec. 6. The following spills from a mode of transportation must be reported:**

**(1) Spills that damage the waters of the state so as to cause death or acute injury or illness to humans or animals.**

**(2) Spills that damage surface waters.**

**(3) Spills to soil:**

**(A) Spills of hazardous substances or extremely hazardous substances when the amount spilled exceeds one hundred (100) pounds or the reportable quantity, whichever is less;**

**(B) Spills of petroleum when the amount spilled exceeds fifty-five (55) gallons; or**

**(C) Spills of objectionable substances as defined in section 4(11) of this rule.**

**(4) Any spill for which a spill response has not been done.**

*(Water Pollution Control Board; 327 IAC 2-6.1-6)*

**327 IAC 2-6.1-7 Reportable spills; responsibilities**

**Authority: IC 13-8-4; IC 13-14-8-7**

**Affected: IC 13-11-2; IC 13-18-1; 13-18-3; 13-18-4; 13-18-8; 13-18-17**

**Sec. 7. Any person who operates, controls, or maintains any mode of transportation or facility from which a spill occurs shall, upon discovery of a reportable spill to the soil or surface waters of the state, do the following:**

**(1) Contain the spill, if possible, to prevent additional spilled material from entering the waters of the state.**

**(2) Undertake or cause others to undertake activities needed to accomplish a spill response.**

**(3) As soon as possible but within two (2) hours of discovery, communicate a spill report to the Department of Environmental Management, Office of**

**Environmental Response:** Area code 1- 888-233-7745 for in state calls (toll free), (317) 233-7745 for out of state calls. If new or updated spill report information becomes known that indicates a significant increase in the likelihood of damage to the waters of the state, the responsible party shall notify the department as soon as possible but within two (2) hours of the time the new or updated information becomes known.

**(4)** Submit to the Department of Environmental Management, Office of Environmental Response, 2525 North Shadeland Avenue, P.O. Box 6015, Indianapolis, IN, 46206-6015, a written copy of the spill report if requested in writing by the department.

**(5)** Except from modes of transportation other than pipelines, exercise due diligence and document attempts to notify the following:

**(A)** For spills to surface water that cause damage, the nearest affected downstream water user located within ten (10) miles of the spill and in the state of Indiana; and

**(B)** For spills to soil outside the facility boundary, the affected property owner or owners, operator or operators, or occupant or occupants.

*(Water Pollution Control Board; 327 IAC 2-6.1-7)*

### **327 IAC 2-6.1-8 Emergency Spill Response Actions**

**Authority:** IC 13-8-4; IC 13-14-8-7

**Affected:** IC 13-11-2; IC 13-18-1; 13-18-3; 13-18-4; 13-18-8; 13-18-17

**Sec. 8.** Notwithstanding any other section of this rule, emergency spill response actions take precedence over reporting requirements, and when emergency spill response activities render spill reporting inconsistent with effective response activities, communication of the spill report to the Indiana department of environmental management may be delayed. In situations where the spill report is delayed, the burden of proving the need for the delay shall be upon the responsible person. *(Water Pollution Control Board; 327 IAC 2-6.1-8)*

### **327 IAC 2-6.1-9 Compliance Confirmation**

**Authority:** IC 13-8-4; IC 13-14-8-7

**Affected:** IC 13-11-2; IC 13-18-1; 13-18-3; 13-18-4; 13-18-8; 13-18-17

**Sec. 9.** When spill reporting and response as provided for in this rule has occurred, the department shall, upon request, issue a letter confirming compliance with this rule and stating that no further action is required under this rule. *(Water Pollution Control Board; 327 IAC 2-6.1-8)*

**SECTION 2. 327 IAC 2-6 IS REPEALED**